

## Calendar No. 542

109TH CONGRESS }  
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SENATE

{ REPORT  
109-299

### MONTANA CEMETERY ACT OF 2006

JULY 31, 2006.—Ordered to be printed

Mr. DOMENICI, from the Committee on Energy and Natural Resources, submitted the following

### R E P O R T

[To accompany S. 997]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 997) to direct the Secretary of Agriculture to convey certain land in the Beaverhead-Deerlodge Forest, Montana, to Jefferson County, Montana, for use as a cemetery, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Montana Cemetery Act of 2006”.

#### SEC. 2. DEFINITIONS.

In this Act:

- (1) COUNTY.—The term “County” means Jefferson County, Montana.
- (2) MAP.—The term “map” means the map that is—
  - (A) entitled “Elkhorn Cemetery”;
  - (B) dated May 9, 2005; and
  - (C) on file in the office of the Beaverhead-Deerlodge National Forest Supervisor.
- (3) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

#### SEC. 3. CONVEYANCE TO JEFFERSON COUNTY, MONTANA.

(a) CONVEYANCE.—Not later than 180 days after the date of enactment of this Act and subject to valid existing rights, the Secretary (acting through the Regional Forester, Northern Region, Missoula, Montana) shall convey by quitclaim deed to the County for no consideration, all right, title, and interest of the United States, except as provided in subsection (e), in and to the parcel of land described in subsection (b).

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is the parcel of approximately 9.67 acres of National Forest System land (including any

improvements to the land) in the County that is known as the “Elkhorn Cemetery”, as generally depicted on the map.

(c) USE OF LAND.—As a condition of the conveyance under subsection (a), the County shall—

(1) use the land described in subsection (b) as a County cemetery; and

(2) agree to manage the cemetery with due consideration and protection for the historic and cultural values of the cemetery, under such terms and conditions as are agreed to by the Secretary and the County.

(d) EASEMENT.—In conveying the land to the County under subsection (a), the Secretary, in accordance with applicable law, shall grant to the County an easement across certain National Forest System land, as generally depicted on the map, to provide access to the land conveyed under that subsection.

(e) REVERSION.—In the quitclaim deed to the County, the Secretary shall provide that the land conveyed to the County under subsection (a) shall revert to the Secretary, at the election of the Secretary, if the land is—

(1) used for a purpose other than the purposes described in subsection (c)(1);

or

(2) managed by the County in a manner that is inconsistent with subsection (c)(2).

2. Amend the title so as to read: “To direct the Secretary of Agriculture to convey certain land in the Beaverhead-Deerlodge National Forest, Montana, to Jefferson County, Montana, for use as a cemetery.”.

#### PURPOSE OF THE MEASURE

The purpose of S. 997 is to direct the Secretary of Agriculture to convey certain land in the Beaverhead-Deerlodge National Forest, Montana, to Jefferson County, Montana, for use as a cemetery.

#### BACKGROUND AND NEED

S. 997 directs the Secretary of Agriculture to convey 10 acres of the Beaverhead-Deerlodge National Forest to Jefferson County, Montana. The land includes the cemetery of the abandoned mining town of Elkhorn in Jefferson County. The Elkhorn Cemetery has been used as a cemetery since the 1860s. The cemetery was included in the National Forest, because of surveying errors and limited information when the National Forest boundaries were surveyed in the early 1900’s.

The cemetery is still in use by local families who homesteaded and worked the mines in the area. However, Forest Service policies strongly discourage burials on National Forest lands, placing both the families and Forest Service in an awkward position.

#### LEGISLATIVE HISTORY

S. 997 was introduced by Senator Burns on May 11, 2005. The Subcommittee on Public Lands and Forests held a hearing on S. 997 on July 20, 2005 (S. Hrg. 109–157). The Committee on Energy and Natural Resources ordered S. 997 favorably reported with an amendment on May 24, 2006.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on May 24, 2006, by a unanimous voice vote of a quorum present recommends that the Senate pass S. 997, if amended as described herein.

## COMMITTEE AMENDMENT

The Committee adopted an amendment in the nature of a substitute that clarifies the terms and conditions of the conveyance, including its easement and reversionary provisions, as well as how the lands may be used by Jefferson County, Montana. In addition, the Committee adopted an amendment to the bill.

## SECTION-BY-SECTION ANALYSIS

*Sections 1 and 2* contain the short title and definitions of terms used in the bill.

*Sections 3 (a and b)* directs the Secretary of Agriculture to convey, subject to valid existing rights, to approximately 10 acres of Beaverhead-Deerlodge National Forest lands to Jefferson County, Montana, for use as a cemetery, within 180 days of enactment.

Subsection (c) provides terms and conditions for use of the conveyed land.

Subsection (d) directs the Secretary of Agriculture to provide a road easement to the property as depicted on the map for the conveyance.

Subsection (e) directs the Secretary to include a reversionary provision in the conveyance.

## COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

*S. 997—Montana Cemetery Act of 2006*

S. 997 would direct the Secretary of Agriculture to convey the Elkhorn Cemetery to Jefferson County, Montana. CBO estimates that enacting S. 997 would have no significant impact on the federal budget and would not affect revenues or direct spending.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Under S.997, the Forest Service would convey to Jefferson County, for no consideration, about 10 acres of land in the Beaverhead-Deerlodge National Forest. Based on the cost of similar conveyances, we estimate that the agency would spend less than \$50,000 in 2007 to complete the proposed conveyance, assuming the availability of appropriated funds. The land to be conveyed under S. 997 is already used by Jefferson County as a cemetery and currently generates no offsetting receipts that would be forgone if the bill is enacted.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 997.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 997.

#### EXECUTIVE COMMUNICATIONS

The views of the Administration were included in testimony received by the Committee at a hearing on the bill on July 20, 2005, as follows:

#### TESTIMONY OF JOEL HOLTROP, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, U.S. FOREST SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE

Mr. Chairman and Members of the Subcommittee, thank you for giving me the opportunity to present the views of the U.S. Department of Agriculture on S. 997, the Montana Cemetery Act of 2005.

#### S. 997—MONTANA CEMETERY ACT OF 2005

This legislation directs the Secretary to convey for no consideration, all right, title, and interest in 10 acres of land within the Beaverhead-Deerlodge National Forests to Jefferson County, Montana to be used for cemetery purposes. The Department is supportive of S. 997, but would recommend that the Committee add provisions to the legislation that will protect historic interests and provide consideration to the Federal government for the conveyance.

The parcel to be conveyed to Jefferson County is currently being used for cemetery purposes but a special use authorization has never been issued for this purpose. The 10-acre conveyance will provide a sufficient amount of land to accommodate all known grave sites and any additional sites that may be outside of the concentration of known sites. In addition the conveyance is of adequate size to include the cemetery parking lot so that it will be located on private property.

The parcel to be conveyed is a National Register eligible property that contributes to the significance of the Elkhorn town site and the Elkhorn historic mining district. We would like to work with the committee and through the NEPA process to ensure that the land conveyed will be managed with due consideration for the historic and cultural values associated with the cemetery.

Also, we are concerned about conveying public land to other jurisdictions without any form of consideration. The Department does not object to making the Federal land available for use as a cemetery, but requests that the conveyance of the public land estate include consideration for the market value of the property and for the administrative costs associated with the conveyance.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 997 as ordered reported.

